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BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

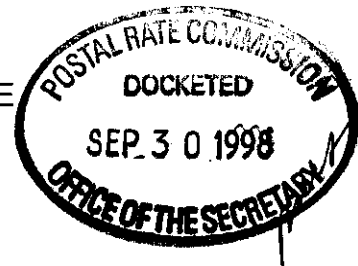
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Mailing Online Service

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Docket No. MC98-1

OFFICE OF THE CONSUMER ADVOCATE
REPLY COMMENTS CONCERNING
PROCEDURAL SCHEDULE
(SEPTEMBER 30, 1998)



The Office of the Consumer Advocate hereby comments on the procedural schedule proposed by the Postal Service for the experimental phase of this proceeding. The Postal Service's September 29 proposal raises two difficult issues. First, as a practical matter, the October 26 date proposed for the filing of rebuttal testimony precludes parties from using any data from the market test in their rebuttal cases. This, in turn, effectively precludes the Commission from using data from the market test in its recommended decision on the experiment, rendering the market test a sham and a nullity. Second, the Service's proposed schedule makes no provision for filing of revised direct testimony of Postal Service witnesses. Significant portions of the testimonies of witnesses Garvey, Seckar, Stirewalt, and Plunkett have been rendered obsolete by the passage of time or the discovery of errors.

The OCA suggests that no procedural schedule can be adopted until two events have occurred: (1) the Postal Service files testimony that conforms to current reality and (2) a meaningful amount of data from the market test has become available for analysis. Setting a date for the end of discovery on the Postal Service's case is premature at this point because the parties do not know what the Service's case is.

What the parties do know is that much of the testimony admitted during the market phase of the hearings has no relation to the actual and expected operation of Mailing Online or contains logical and arithmetical errors.¹ At present, the Service's direct case is a moving target, changing daily as parties identify new errors or deviations from actual practice.

The purpose of the market test, as explained by the Postal Service, is to collect data that will be useful in evaluating the proposed experiment. No such data are currently available, as the market test has not yet commenced. Neither the Commission nor the parties can know when the market test will commence (it has been postponed once already) or when data from that test will become available for meaningful analysis. What is virtually certain is that little if any data will be available in time for parties to use in their rebuttal cases, much less for cross-examination of Postal Service witnesses, given the schedule proposed by the Postal Service.²

Neither the Commission nor the parties is under any obligation to complete the experimental phase of this case in time for a January 10, 1999, implementation. The Service did not file its request at a time that would make such an implementation date feasible. The Service postponed implementation of the market test, thus precluding the

¹ Most of witness Seckar's cost testimony (and witness Plunkett's reliance on that testimony) has been contradicted by the terms of the printing contract. Witness Stirewalt's library reference is so riddled with errors that only the Postal Service has a prayer of correcting it.

² The Standard A portion of the experiment is not scheduled to start until October 15. Tr. 1/15. Data from that portion of the test are unlikely to appear in less than two weeks—i.e., before October 29. To propose hearing dates of October 20-21 and a deadline for rebuttal cases of October 26 amounts to excluding evidence derived from the market test. This in turn renders the market test meaningless.

001687

Commission and the parties from obtaining information from the market test in time for use in the experimental phase of this proceeding. And the Postal Service has failed to conform its direct case to actual operations and has failed to correct known errors in its testimony. For all of these reasons, the Commission should defer setting any procedural dates until data from the market test have begun to flow to the Commission and the Service has filed testimony that (1) conforms to current operations and expectations and (2) is free of known errors.

Respectfully submitted,



EMMETT RAND COSTICH
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Office of the Consumer Advocate

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.



EMMETT RAND COSTICH
Attorney

Washington, D.C. 20268-0001
September 30, 1998